

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JERALD EDWARD AVISE,

Defendant.

No. CR05-3026-MWB

**ORDER ACCEPTING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION REGARDING
DEFENDANT'S RULE 11(c)(1)(C)
GUILTY PLEA**

I. INTRODUCTION AND BACKGROUND

On September 20, 2005, an indictment was returned against defendant Jerald Edward Avise, charging him with conspiracy to distribute and possess with intent to distribute 5 grams or more of pure methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B) and 846, possessing with intent to distribute 5 grams or more of pure methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B), possession of firearms and ammunition in furtherance of drug trafficking crimes, in violation of 18 U.S.C. § 924(c)(1)(A)i), and possession of firearms and ammunition by an unlawful user of a controlled substance, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2). On May 31, 2006, defendant appeared before United States Magistrate Judge Paul A. Zoss and entered a plea of guilty to Counts of 1, 2 and 4 of the indictment. On this same date, Judge Zoss filed a Report and Recommendation in which he recommends that defendant's guilty plea be accepted. No objections to Judge Zoss's Report and Recommendation were filed. The court, therefore, undertakes the necessary review of Judge Zoss's recommendation to accept defendant's plea in this case.

II. ANALYSIS

Pursuant to statute, this court's standard of review for a magistrate judge's Report and Recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge].

28 U.S.C. § 636(b)(1). Similarly, Federal Rule of Civil Procedure 72(b) provides for review of a magistrate judge's Report and Recommendation on dispositive motions and prisoner petitions, where objections are made, as follows:

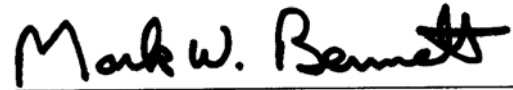
The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b).

In this case, no objections have been filed, and it appears to the court upon review of Judge Zoss's findings and conclusions, that there is no ground to reject or modify them. Therefore, the court **accepts** Judge Zoss's Report and Recommendation of May 31, 2006, and accepts defendant's plea of guilty in this case to Counts 1, 2 and 4 of the indictment.

IT IS SO ORDERED.

DATED this 28th day of August, 2006.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive style with a prominent "M" and "B".

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA